

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>MARSHA L. KELLEY</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>KINEDYNE CORPORATION</b>	)	
Respondent	)	Docket Nos. 233,493 &
	)	255,564
	)	
AND	)	
	)	
<b>LIBERTY MUTUAL INSURANCE CO.</b>	)	
and <b>AMERICAN HOME ASSURANCE CO.</b>	)	
Insurance Carriers	)	

**ORDER**

Claimant requested review of the January 18, 2006, Order Denying Medical Treatment by Administrative Law Judge (ALJ) Brad E. Avery. This matter was placed on the Board's summary calendar for determination without oral argument.

**RECORD AND STIPULATIONS**

The Board has considered the official files, the transcripts of hearings, depositions and attached exhibits taken previously in connection with the litigation of Docket Nos. 233,493 and 255,564; the transcript of the Post-Award Hearing held July 19, 2005; the transcript and attached exhibits of the deposition of Dr. Lynn Ketchum taken October 5, 2005; the transcript and attached exhibits of the deposition of Dr. John Moore taken December 20, 2005; and the August 22, 2005, medical report of Dr. Mary Ann Hoffmann, who performed an independent medical examination (IME) of claimant as ordered by the ALJ. The Board adopts the stipulations listed in the Awards in Docket Nos. 233,493 and 255,564.

**ISSUES**

The ALJ found that claimant's need for medical treatment is related to her work at her current job and not her past employment at respondent. Accordingly, the ALJ denied claimant's request for additional medical treatment with Dr. Ketchum.

Claimant has admitted in her submission letter to the ALJ and in her brief to the Board that both Drs. Ketchum and Moore have opined that claimant's current job has aggravated the conditions giving rise to her need for treatment of her left thumb and right ring finger and is withdrawing her request for treatment for those conditions. She asserts, however, that her myofascial pain syndrome developed as a result of her work at respondent and that as a result, any work involving her upper extremities will cause an increase in these symptoms. Claimant, therefore, requests that respondent be ordered to provide medical treatment for her myofascial pain syndrome.

Respondent and its insurance carriers (respondent) argue that the ALJ correctly found that all of claimant's need for medical treatment is related to her current employment and, therefore, respondent is not liable for providing the additional medical treatment requested. Accordingly, respondent requests that the ALJ's Order Denying Medical Treatment be affirmed.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

Claimant worked for respondent as a sewer for about eight years. She was terminated on April 13, 2001, because respondent could not accommodate her permanent work restrictions. In May 1997, she began having pain in her bilateral upper extremities. On May 4, 1998, she filed an Application for Hearing, Docket No. 233,493, claiming a series of injuries to her "left arm and elbow; right arm, hand and elbow; and all affected areas" beginning "May 13, 1997 and each and every day worked since."<sup>1</sup> The ending date of the series of accidents was found to be August 17, 1999.<sup>2</sup>

On May 11, 2000, claimant filed a second Application for Hearing, Docket No. 255,564, claiming a series of accidents beginning "June 28, 1999 and each and every day worked" and injuries to her "left arm and elbow; right arm, hand and elbow; and all affected areas."<sup>3</sup> The date of accident for this series of accidents was found to be April 13, 2001, claimant's last day of work for respondent.<sup>4</sup>

---

<sup>1</sup>Form K-WC E-1 filed May 4, 1998.

<sup>2</sup>Board's Order, 2000 WL 759359 (WCAB May 17, 2000).

<sup>3</sup>Form K-WC E-1 filed May 11, 2000.

<sup>4</sup>Board Order, 2003 WL 22150511 (WCAB Aug. 27, 2003).

Awards were entered in both docketed claims. In the November 1, 1999, Award by the ALJ, the compensability of claimant's injuries were not at issue. Accordingly, there is very little discussion about the nature and extent of claimant's injuries. The ALJ adopted the 21 percent impairment rating of Dr. Lanny Harris, the court-appointed medical expert. His June 11, 1999, report does not mention myofascial pain syndrome, but it concludes with the recommendation that claimant "consider doing some other activity that is not as stressful to her upper extremities, simply because if she does [those], she will probably incur increasing physical impairment, and additional physical problems." In Docket No. 233,493, the Board noted in its Order that claimant described bilateral upper extremity pain that sometimes went up into her neck and upper back. She underwent surgery for cubital tunnel syndrome and lateral epicondylitis, both on the left upper extremity. The ALJ awarded claimant a 21 percent functional impairment to the body as a whole. In Docket No. 255,564 the ALJ found that claimant suffered a scheduled injury to her right upper extremity, of which a 5 percent impairment of function was attributed to that claim. In both Awards, the ALJ found that claimant was entitled to future medical care upon application and review. The Board, in separate appeals, affirmed the decisions of the ALJ as to the nature and extent of claimant's disability and the award of future medical treatment upon application to and approval of the Director.

These docketed claims have been before the Board previously on several occasions. Here, claimant has filed an Application for Post Award Medical in each of these two docketed claims requesting additional medical treatment with Dr. Ketchum. Claimant testified that she was currently suffering from pain in her hands, arms, elbows, and shoulders. She also stated that it was hard for her to turn her head because she would get knots in the back of her neck. She claimed she had these problems with her upper extremities since she first began receiving treatment for her work injuries, but her symptoms have gotten worse. At the Regular Hearing in Docket No. 255,564, she testified that she had a burning sensation and knots developed on her arms going all the way to her neck. She testified that she has "great big knots back here in the back of my neck."<sup>5</sup> However, no permanent functional impairment or disability to claimant's back or neck was awarded in Docket No. 255,564. Her permanent partial disability award in that case was to the right upper extremity only based upon a diagnosis of cubital tunnel syndrome, de Quervain's syndrome and lateral epicondylitis. Likewise, in Docket No. 255,564, her surgeries involved only the right upper extremity.

Claimant currently works at Kansas City Bindery and Milling (K.C. Bindery) sorting mail. She stated that when the mail comes down a conveyor, she uses a scooping motion with her right hand to pick it up. She then puts it in stacks and the bagger ties and bags it. At times she also feeds mail into a machine. When doing this, she uses both hands to reach down and pick up the mail and puts it in a pocket. She also feeds a stitching machine, where she picks up a stack of paper with both hands, jogs the paper, and puts

---

<sup>5</sup>Docket No. 255,564 R.H. Trans. (Feb. 19, 2002) at 23.

it into the machine. However, she denies that her job duties at her current job require gripping, pinching or grasping with her hands.

At the July 19, 2005, Post Award Hearing, claimant was asked to describe the onset and progression of her current symptoms. Unfortunately, her answers provide little guidance as she describes them both as ongoing since her original claims but also worsening during the time she was employed with K.C. Bindery.

Q. Can you tell the judge what sort of physical difficulties you're having today as a result of those work injuries?

A. I'm having a hard time doing anything because my arms hurt and my shoulders. It goes up into my shoulders and—the tendinitis does, and sometimes it gets hard to even turn my head because I get those knots in the back of my neck like I had in the past.<sup>6</sup>

....

JUDGE AVERY: And have those problems ever gone away?

THE CLAIMANT: Not really gone away. It just gets worse at times.<sup>7</sup>

....

JUDGE AVERY: Dr. Moore. Okay. And did Dr. Moore's surgery improve your left elbow?

THE CLAIMANT: Yes, it did.

JUDGE AVERY: Did your left elbow remain the same, get better or get worse over the course of time?

THE CLAIMANT: It's gotten worse. The tendinitis is back.

JUDGE AVERY: Okay. And when you say got worse, what do you—precisely what do you mean? Is it more pain or what? What do you mean by that?

THE CLAIMANT: I mean, it's more pain and it's—goes up into my shoulders like it always has.<sup>8</sup>

---

<sup>6</sup>Post Award Hearing (July 19, 2005) at 7.

<sup>7</sup>*Id.* at 23.

<sup>8</sup>*Id.* at 27-28.

Claimant saw Dr. John Moore on July 5, 2005. At that time, she reported that she had been working at K.C. Bindery for three years sorting mail and feeding paper into a stitcher. Claimant's foremost complaint was an aching and burning pain in her dorsal forearms bilaterally caused by myofascial pain syndrome, worse on the left side, that extended into her posterior shoulders and the trapezius muscles. In his report of that date, Dr. Moore noted: "This [myofascial pain syndrome] has been present as long as she has been under my care and has continued under Dr. Ketchum's through both employers."<sup>9</sup> He stated that there was no surgical treatment for this condition but that it should be treated with a combination of anti-inflammatory medicine, Elavil at night, and massage therapy.

Dr. Moore acknowledged that he sent claimant to Dr. Vito Carabetta for treatment of myofascial pain syndrome in 2000 and that treatment of her current condition would be similar to that which she obtained from Dr. Carabetta.<sup>10</sup> Dr. Moore opined that claimant's current myofascial condition was the same as it was in 2000 and has not increased.

Dr. Moore stated that myofascial pain syndrome is a chronic condition that will be present as long as claimant is doing work with her hands, regardless of the nature of the work. He testified, however, that it is not a work injury but a consequence of work. He said the syndrome was caused by an irritation of the nerve where it enters the muscle. He opined that because claimant worked with her hands at K.C. Bindery, her job there was aggravating her myofascial pain syndrome and her current pain is not related to her work at respondent. Therefore, any treatment she needs for myofascial pain syndrome would be related to and aggravation caused by her work at K.C. Bindery.

Claimant next complained of pain and tenderness in her left thumb and right ring finger. Dr. Moore diagnosed her with trigger fingers in her left thumb and right ring finger and said she would eventually need trigger thumb and finger release done surgically. Dr. Moore stated that these complaints had their onset during claimant's employment with K.C. Bindery and should be considered related to her work there.

Claimant also complained of numbness in her hands at nighttime. Dr. Moore stated she was developing peripheral nerve compressions and recommended nerve conduction studies to document the presence of the nerve compression and gauge its severity. He opined that this condition also had its onset during claimant's employment at K.C. Bindery.

---

<sup>9</sup>Moore Depo. (Dec. 20, 2005), Ex. 2 at 1.

<sup>10</sup>See Moore Depo. (Oct. 4, 1999) at 24, where he testified that he referred claimant to Dr. Carabetta in July 1998. Dr. Carabetta's report is included as an exhibit in that deposition.

Dr. Ketchum first saw claimant on May 14, 1998. In June 2003, claimant went to him complaining of problems with her thumb. Claimant told Dr. Ketchum that she had recently had surgery on her thumb performed by Dr. Moore for tendinitis. Dr. Ketchum took x-rays of claimant's thumb, which he stated showed subluxation of the first metacarpal on the carpometacarpal (CMC) joint. Claimant also complained of myofascial pain syndrome in her upper back and pain in the bicipital grooves of both shoulders, which he thought indicated biceps tendinitis. He performed a resection interposition arthroplasty of the left first CMC joint on July 30, 2004. At the same time he did a whole blood aspiration and injection into claimant's left elbow. On June 21, 2005, claimant again saw Dr. Ketchum, complaining of pain in her left thumb and right fourth finger. He diagnosed her with stenosing tenosynovitis of the A1 pulley of the left thumb and right finger. He injected the thumb and finger with triamcinolone. He stated claimant also had recurrent left lateral humeral epicondylitis (tennis elbow), and he prescribed a lidocaine patch over the left elbow. He noted she had some nodules of myofascial pain syndrome on her back, for which he recommended a daily deep towel massage.

Dr. Ketchum opined that the stenosing tenosynovitis of the thumb and right finger were related to claimant's work at K.C. Bindery. He believed that claimant's tennis elbow was related to her work at respondent. He testified that claimant's myofascial pain syndrome was related to her work at respondent but was exacerbated by her work at K.C. Bindery. He testified, as did Dr. Moore, that any repetitive use of claimant's upper extremities would aggravate her myofascial pain syndrome.

The ALJ ordered an IME to be performed by Dr. Hoffmann in relation to the Application for Post Award Medical. Dr. Hoffmann saw claimant on August 19, 2005. At that time, claimant was complaining of pain in her left arm going up into her neck, discomfort in the dorsal and volar aspects of both forearms with use and with touch, numbness and tingling in her hands, myofascial upper back pain, and left trigger thumb and right trigger ring finger. Dr. Hoffmann opined that respondent should be responsible for any treatment of claimant's elbow. She believed, however, that claimant's problems with her left thumb and right ring finger began after she was terminated from her employment at respondent and that K.C. Bindery should be responsible for the treatment of those injuries.

Every direct and natural consequence that flows from a compensable injury, including a new and distinct injury, is also compensable under the Workers Compensation Act.<sup>11</sup> In *Jackson*,<sup>12</sup> the Court held:

---

<sup>11</sup> *Nance v. Harvey County*, 263 Kan. 542, 952 P.2d 411 (1997).

<sup>12</sup> *Jackson v. Stevens Well Service*, 208 Kan. 637, Syl. ¶ 1, 493 P.2d 264 (1972).

When a primary injury under the Workmen's Compensation Act is shown to have arisen out of the course of employment every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury.

However, the *Jackson* rule does not apply to new and separate accidental injuries. In *Stockman*,<sup>13</sup> the Court attempted to clarify the rule:

The rule in *Jackson* is limited to the results of one accidental injury. The rule was not intended to apply to a new and separate accidental injury such as occurred in the instant case. The rule in *Jackson* would apply to a situation where a claimant's disability gradually increased from a primary accidental injury, but not when the increased disability resulted from a new and separate accident.

In *Stockman*, claimant suffered a compensable back injury while at work. The day after being released to return to work, the claimant injured his back while moving a tire at home. The *Stockman* court found this to be a new and separate accident.

In *Gillig*<sup>14</sup> the claimant injured his knee in January 1973. There was no dispute that the original injury was compensable under the Workers Compensation Act. In March 1975, while working on his farm, the claimant twisted his knee as he stepped down from a tractor. Later, while watching television, the claimant's knee locked up on him. He underwent an additional surgery. The district court in *Gillig* found that the original injury was responsible for the surgery in 1975. This holding was upheld by the Kansas Supreme Court.

In *Graber*<sup>15</sup> the Kansas Court of Appeals was asked to reconcile *Gillig* and *Stockman*. It did so by noting that *Gillig* involved torn knee cartilage which had never properly healed. *Stockman*, on the other hand, involved a distinct re-injury of a back sprain that had subsided. The Court in *Graber* found that its claimant had suffered a new injury, which was "a distinct trauma-inducing event out of the ordinary pattern of life and not a mere aggravation of a weakened back."<sup>16</sup>

---

<sup>13</sup> *Stockman v. Goodyear Tire and Rubber Co.*, 211 Kan. 260, 263, 505 P.2d 697 (1973).

<sup>14</sup> *Gillig v. Cities Service Gas Co.*, 222 Kan. 369, 564 P.2d 548 (1977).

<sup>15</sup> *Graber v. Crossroads Cooperative Ass'n*, 7 Kan. App. 2d 726, 648 P.2d 265, rev. denied 231 Kan. 800 (1982).

<sup>16</sup>*Id.* at 728.

Claimant has a history of ongoing symptoms and treatment since her original injuries with respondent. Nevertheless, the clear weight of the medical evidence is that her work with her current employer has aggravated her preexisting condition. And those aggravations were caused by work activities which constitute subsequent traumatic events. While it cannot be said from this record that claimant has suffered permanent aggravations, it appears that she has had at least a temporary worsening of symptoms from her current work which is “a distinct trauma-inducing event out of the ordinary pattern of life.” The Board finds and concludes that claimant’s present symptoms and need for treatment are not a direct and natural consequence of her original injuries in these docketed claims.

**AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Order Denying Medical Treatment entered by Administrative Law Judge Brad E. Avery dated January 18, 2006, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of March, 2006.

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

- c: Chris Miller, Attorney for Claimant
- James K. Blickhan, Attorney for Respondent and its Insurance Carriers
- Brad E. Avery, Administrative Law Judge
- Paula S. Greathouse, Workers Compensation Director